



California Fair Political Practices Commission

May 14, 1987

Randy Riddle
Deputy City Attorney
Office of the City Attorney
City Hall, Room 206
San Francisco, CA 94102-4682

Re: Your Request for Assistance
Our File No. I-87-098

Dear Mr. Riddle:

This letter will confirm telephone advice previously provided to you on April 28, 1987. This letter is in response to your letter of March 26, 1987, in which you request our assistance on behalf of Mr. Robert Katz, a member of the San Francisco Health Service Board (the "Board"). Because your letter raises questions about general issues rather than specific pending decisions, we have treated it as one seeking informal assistance regarding the Political Reform Act (the "Act").^{1/}

QUESTION

As a member of the board, may Mr. Katz participate in decisions regarding various aspects of the city's employee health care plans, including rates, coverage and providers?

CONCLUSION

Mr. Katz may not participate in any board decision which will have a reasonably foreseeable material financial effect on his employer which is distinguishable from the decision's effect upon the public generally.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

Informal assistance is rendered pursuant to 2 California Administrative Code Section 18329 (copy enclosed). Informal assistance does not provide the requestor with the immunities provided for in Section 83114(b).

FACTS

Mr. Katz was appointed to the board pursuant to San Francisco Charter Section 3.680, which requires the Mayor to appoint to the board one member who is a "resident official of an insurance company." At the time he was appointed, Mr. Katz was an official with Blue Cross of California. He recently became Director of Marketing with Heal's Health Plans ("Heal's"), a health maintenance organization that contracts with the city as a health care provider to city employees and their dependents.

There are currently seven different health care providers that contract with the city. Employees are free to choose any one of these seven plans. Presumably, an employee's determination to choose one of the seven depends, among other factors, on the benefits offered by, and the monthly cost of, the plan.

The board is charged with administering the various health care plans. With respect to "City Health Plan 1", which is administered solely by the board, this involves setting rates adequate to cover the benefits provided, determining what benefits to provide, and generally overseeing the administration of the plan. With respect to plans that the city obtains by contract with outside health insurance companies or health maintenance organizations, the board's duties involve reviewing those plans to determine whether the benefits to city employees and the costs of the respective plans merit their continued contractual relationship with the city. The board also reviews other health care organizations interested in contracting with the city. Again, it reviews these plans to determine whether, given the costs and benefits available, those plans should be offered to city employees. In addition, the board oversees delivery of services by plans it has approved, to determine whether the employees have received the services for which they have contracted.

In the next three-month period, the following decisions may come before the board:

1. After reviewing the Heal's Health Plan, the board may be required to determine whether to continue to contract with Heal's.
2. After reviewing other health plans that contract with the city, the board may be required to determine whether to continue contracting with those plans.

3. The board may be reviewing new health plans that submit proposals to the board to determine whether those plans should be added to those made available to city employees and their dependents.

4. The board may be required to determine whether to increase the benefits under City Plan 1 or to increase the premiums or the amount of deductibles for Plan 1.

5. The board may seek out insurance companies or health maintenance organizations that have not expressed interest in becoming providers to the city, but which may offer superior services to city employees.

6. The board may be required to review the current benefits provided and premiums charged by various plans to determine whether to approach these plans regarding decreasing their monthly premiums or increasing the benefits provided by the plans.

7. The board may be required to make administrative decisions regarding whether to hire new full-time staff members for the board, whether to rent additional office space, etc.

ANALYSIS

The conflict of interest provisions of the Act prohibit a public official from making, participating in making, or using his or her official position to influence any governmental decisions in which he or she has a financial interest. (Section 87100.) An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect distinguishable from the effect on the public generally, on the official, the official's immediate family, or on:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Randy Riddle
May 14, 1987
Page 4

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(c) and (d).

Mr. Katz is employed by Heal's as its Director of Marketing, and he receives \$250 or more in income from Heal's. Mr. Katz must disqualify himself from participating in any way in any board decision which will have a reasonably foreseeable material financial effect upon Heal's which is distinguishable from the decision's effect upon the public generally or a significant segment of the public generally. (Section 87103; Regulation 18703.)

The first example you mention presents a situation in which disqualification is clearly required. Any decisions involving the city's health plan contract with Heal's are situations in which Heal's is the subject of the proceeding. Regulation 18702.1(a)(1) requires disqualification under such circumstances. Furthermore, as I indicated to you in our telephone conversation, these circumstances raise questions as to the possible application of Section 1090. You are reviewing that issue and will consult with the Attorney General's Office in that regard. Since Section 1090 is outside of the Political Reform Act, we cannot provide advice as to its application.

Your second, third, fourth, fifth and sixth examples involve various situations in which Heal's is not the subject of the decision. Other competing health plans would be affected by the decisions described in those five situations. However, in each of these situations, the board's decision can have an effect upon the number of city employees who may choose to use Heal's plan. As you have recognized in your letter:

There are currently seven different health care providers that contract with the city. Employees are free to choose any one of these seven plans. Presumably, an employee's determination to choose one of the seven depends, among other factors, on the benefits offered by and the monthly cost of the plan. (Your letter of March 26, 1987, page 1.)

In his role as marketing director, Mr. Katz is paid to attract and retain enrollees in Heal's plan. Therefore, there is a "nexus" between Mr. Katz' role as marketing director for

Randy Riddle
May 14, 1987
Page 5

Heal's and the decisions involved in each of the examples numbered two through six. Regulation 18702(b)(3)(B) provides as follows:

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

* * *

(3) Whether, in the case of a source of income as defined in Government Code Section 87103(c), of two hundred fifty dollars (\$250) or more received by or promised to a public official within 12 months prior to the time the decision is made:

* * *

(B) There is a nexus between the governmental decision and the purpose for which the official receives income....

Consequently, disqualification is required with respect to these decisions.

Your seventh example involves administrative decisions affecting internal matters of the board. We see no reason for requiring disqualification with respect to the types of decisions specified.

Because the San Francisco City Charter specifically requires that one member of the board be a "resident official of an insurance company", you have also inquired regarding whether it is feasible for any such person to serve on the board without encountering frequent circumstances requiring disqualification. You have pointed out that it is important that "at least one member of the Board be familiar with the principles of the insurance industry" in order for the board to carry out its fiduciary duty to the city's employees in the operation of the city's own Health Plan 1 and in the oversight of competing health plans.

It is clear from your statement that an insurance industry official could be appointed without the inherent conflicts faced by Mr. Katz. First, some companies may not be involved in health plans. Secondly, they may not be involved in such plans for public sector employees in northern California.

Randy Riddle
May 14, 1987
Page 6

Where a representative from a particular industry is required on a particular board or commission, the "public generally" exception for disqualification may apply differently. Under some circumstances, the subject industry constitutes a "significant segment of the general public." (Regulation 18703.) As a result, the industry representative may participate in decisions affecting his or her employer so long as those effects are substantially similar to the effects on the industry as a whole. (Regulation 18703(c) and (d).)

In this instance, it is not clear from the city's charter whether the requirements of Regulation 18703(c) are met. Your letter does not indicate that the required finding is included in the city charter. In addition, it is not clear whether the requirements for an implicit finding under Regulation 18703(d) can be met, because it does not appear that the industry representative is appointed "to represent and further the interest of the insurance industry...." (Regulation 18703(d).) Your letter seems to imply that the purpose of the charter in requiring an insurance industry representative is to provide the board with certain expertise, not to further industry interests. Consequently, we are not sure that application of Regulation 18703(d) is justified in this circumstance.

You may wish to review this advice and provide us with further information regarding the charter provision to assist in resolving this question. You may also wish to review the Court's decision in Consumers Union v. California Milk Advisory Board (1978) 82 Cal. App. 3d 433, 438, 444-448, and the Overstreet Opinion, 6 FPCC Ops. 12 (No. 80-010, March 2, 1981), copy enclosed.

If you or Mr. Katz have questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

REL:km
Enclosures



Louise H. Renne,
City Attorney

F P C
MAR 30 8 28 AM '87
March 26, 1987

Fair Political Practices Commission
Legal Division
428 J Street
Suite 800
Sacramento, California 95814

Dear Gentilepersons:

We are writing on behalf of Mr. Robert Katz, a member of the San Francisco Health Service Board ("Board"). Mr. Katz was appointed to the Board pursuant to San Francisco Charter Section 3.680, which requires the Mayor to appoint to the Board one member who is a "resident official of an insurance company." At the time he was appointed, Mr. Katz was an official with Blue Cross of California. He recently became Director of Marketing with Heal's Health Plans ("Heals"), a health maintenance organization that contracts with the City as a health care provider to City employees and their dependents.

There are currently seven different health care providers that contract with the City. Employees are free to choose any one of these seven plans. Presumably, an employee's determination to choose one of the seven depends, among other factors, on the benefits offered by and the monthly cost of the plan.

The Board is charged with administering the various health care plans. With respect to "City Health Plan 1", which is administered solely by the Board, this involves setting rates adequate to cover the benefits provided, determining what benefits to provide, and generally overseeing the administration of the plan. With respect to plans that the City obtains by contract with outside health insurance companies or health maintenance organizations, the Board's duties involve reviewing those plans to determine whether the benefits to City employees and the costs of the respective plans merit their continued contractual relationship with the City. The Board also reviews other health care organizations interested in contracting with the City. Again, it reviews these plans to determine whether, given their costs of benefits available, they should be offered to City employees. In addition, the Board oversees delivery of services by plans its has approved, to determine whether the employees have received the services for which the have contracted.

As an official with Heal's, Mr. Katz has asked under what circumstances he will be required to disqualify himself from

participating in decisions of the Board. In the next three month period, the following decisions may come before the Board:

1. After reviewing the Heal's Health Plan, the Board may be required to determine whether to continue to contract with Heals.
2. After reviewing other health plans that contract with the City, the Board may be required to determine whether to continue contracting with those plans.
3. The Board may be reviewing new health plans that submit proposals to the board to determine whether those plans should be added to those made available to City employees and their dependents.
4. The Board may be required to determine whether to increase the benefits under City Plan 1 or to increase the premiums or the amount of deductibles for Plan 1.
5. The Board may seek out insurance companies or health maintenance organizations that have not expressed interest in becoming providers to the City but may offer superior services to City employees.
6. The Board may be required to review the current benefits provided and premiums charged by other plans to determine whether to approach these plans regarding decreasing their monthly premiums or increasing the benefits provided by the plans.
7. The Board may be required to make administrative decisions regarding whether to hire new full-time staff members for the Board, whether to rent additional office space, etc.

Clearly, each of these decisions may have a financial effect on Heals, Mr. Katz's employer. However, whether any of these decisions will have a material financial effect on Heals is speculative. Absent hiring an actuary, or conducting a poll of City employees, it is impossible to determine whether raising the premiums of Health Plan 1, terminating one of the other current health care providers or adding a new health care provider will materially financially affect Heals.

This problem is confounded by the fact that the San Francisco Charter requires that one member of the Board be a resident insurance official. Obviously, the purpose of this provision is to ensure that at least one member of the

Board be familiar with the principles of the insurance industry. Mr. Katz informs us that most major insurance companies currently either offer to employers health care plans or are in the process of developing such health care plans. In other words, almost any health insurance company official whom the Mayor may appoint to the Board will have a potential conflict of interest, although perhaps not so direct a conflict as a Board member who is employee or officer of one of the current providers to the City.

Under some circumstances, the conflict of interest provisions set out in the Fair Political Practices Act and corresponding regulations effectively preclude from membership on boards such as the Health Services Board those persons in industries most familiar with the principles involved in the boards' duties and most capable of making informed decisions. This issue may also arise where local law requires rent control boards to include as members landlord and tenant representatives. Such persons would have to seek out the advice of this office or the commission prior to every meeting of the Board to determine whether they are precluded from participating in any of the decisions coming before the Board at that meeting.

Mr. Katz's expertise in this new and expanding industry of health maintenance organization and other facets of health care would be invaluable to the Health Services Board. The removal from participation on the Board of persons like Mr. Katz may adversely affect the City ability to fulfill its fiduciary duty to City employees prudently to manage the various health care plans. This is especially true with respect to Plan 1. In contrast to the other Plans, for which the Board contracts with outside providers, the Board manages all aspects of City Plan 1. At the very least, removal of insurance experts from the Board may require that the Board hire at considerable expense outside insurance consultants. It is entirely possible that these persons may face conflict problems similar to those that confront Mr. Katz. The purpose of conflict of interest laws is to protect the public's interest and to promote credibility of the decision-making process. The conflict of interest law should not be construed so as to deprive the public of the best available talent where the voters have elected to specify that members of an industry should be on a board. Yet, that is the only result our reading of the Political Reform Act compels.

The conflict of interest laws set down in the Political Reform Act are transactional. An official is precluded from participation in decisions in which he or she has financial interest. In view of the specialized and limited function of the Health Services Board and the Charter provision that one Board member be a resident official from an insurance company, we have advised Mr. Katz that he may have conflicts that preclude him from participation in the majority of the Health Services Board decision.

Please advise whether, in your opinion, Mr. Katz is disqualified from participating in any of the seven decisions set out above. As part of your opinion, please explain whether any provision of the Act or any regulation promulgated or decision issued by the Commission addresses the issue of the disqualification of board members appointed from a certain constituency pursuant to law where any person from that constituency may labor under conflicting loyalties.

Please feel free to call Mr. Randy Riddle, Deputy City Attorney, at (415) 554-4211 if you need any further information to resolve fully the questions presented in this letter.

Thank you very much for your attention to this matter.

Very truly yours,

LOUISE H. RENNE

City Attorney

A handwritten signature in dark ink, appearing to read 'Randy Riddle', is written over the typed name.

RANDY RIDDLE

Deputy City Attorney

7054F



California Fair Political Practices Commission

March 31, 1987

Randy Riddle
City Attorney's Office
Room 206 City Hall
San Francisco, CA 94102-4682

Re: 87-098

Dear Mr. Riddle:

Your letter requesting advice under the Political Reform Act was received on March 30, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert E. Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh
cc: Robert Katz